

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

July 21, 2008

No. 08-50078
c/w No. 08-50082
Summary Calendar

Charles R. Fulbruge III
Clerk

UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

JESUS RAMON MUNOZ-HERNANDEZ

Defendant-Appellant

Appeals from the United States District Court
for the Western District of Texas
USDC No. 3:02-CR-1195-ALL
USDC No. 3:07-CR-2332-ALL

Before KING, DENNIS, and OWEN, Circuit Judges.

PER CURIAM:*

Jesus Ramon Munoz-Hernandez appeals following his guilty-plea conviction of, and sentence for, illegal reentry into the United States and the concomitant revocation of his supervised release related to a prior conviction for illegal reentry. In light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), Munoz-Hernandez challenges the sentence imposed for his new conviction by

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

questioning the constitutionality of 8 U.S.C. § 1326(b)'s treatment of prior felony and aggravated felony convictions as sentencing factors rather than elements of the offense that must be found by a jury. As Munoz-Hernandez concedes, this argument is foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998). *United States v. Pineda-Arellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

Munoz-Hernandez's appeal of his revocation of supervised release was consolidated with the instant appeal. He has not, however, raised any argument with respect to these proceedings. Any such claim is thus deemed abandoned. See *Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993).

The Government's motions for summary affirmance and to waive the requirement to file an appellee's brief are GRANTED, the Government's motion for an extension of time to file an appellee's brief is DENIED, and the district court's judgments are AFFIRMED.